U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35564040

Date: JAN. 08, 2025

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a medical research application developer, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition concluding the Petitioner did not establish that she was an individual of exceptional ability. The Director further determined that the Petitioner did not demonstrate the Beneficiary's eligibility for a national interest waiver. The Petitioner later filed a motion that the Director dismissed. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision.

I. EXCEPTIONAL ABILITY

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification of the beneficiary for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See generally* 6 USCIS Policy Manual F.5(B)(2), https://www.uscis.gov/policy-manual. If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

The Petitioner indicated that although she was a self-petitioner, she was employed by [redacted] as a medical research application developer and responsible for developing and implementing software applications and data management tools tailored to the unique needs of medical researchers. The Petitioner asserted she was involved in the co-development of software and data management tools, including an application called [redacted] used in clinical trials and implemented by medical research teams at institutions across the United States. The Petitioner also indicated that she customized software and tools for research projects coordinated through the National Institute of Health (NIH). The Petitioner stated that she would continue to work in her same role at [redacted] "crafting bespoke applications tailored to the unique needs of medical researchers," including working on a pilot project called [redacted] launched in coordination with the Center for Disease Control and aimed at developing "a reliable, scalable, interoperable solution for the collection and exchange of health data between facilities across the United States…to modernize public health data infrastructure."

The Director concluded that the Petitioner established three of six categories of evidence at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), including those related to (A) an academic record related to the area of exceptional ability, (E) membership in a professional association, and (F) evidence of recognition for achievements and significant contributions to the industry. However, the Director determined, in a final merits analysis, that the Petitioner did not demonstrate that she had a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

On appeal, the Petitioner contends the Director erred in concluding she did not have a degree of expertise significantly above that ordinarily encountered in her field. The Petitioner states the Director's final merits reasoning that her work was "localized" and did not extend beyond her employer was inconsistent with its determination that she made significant contributions to her field, consistent with 8 C.F.R. § 204.5(k)(3)(ii)(F). The Petitioner further asserts that the Director applied novel evidentiary requirements, including requiring that support letters be outside her acquaintances and colleagues and that she be at the top of her field rather than having a degree of expertise significantly above those ordinarily encountered in her field.

Upon review, we agree with the Petitioner, as she submitted sufficient evidence to establish that she more likely than not has a degree of expertise significantly above those ordinarily encountered in her field. The Petitioner provided sufficient evidence demonstrating that she co-developed an application that has been widely adopted by medical research institutions around the country, and likewise involved in other research projects working in coordination with the National Institutes of Health (NIH) through her position at [redacted] as documented in numerous support letters and industry articles. The provided evidence indicates she likely has a level of expertise significantly above those normally encountered in the field. Therefore, the Director conclusion to the contrary is withdrawn as it has been sufficiently established that the Beneficiary is an individual of exceptional ability.

II. NATIONAL INTEREST WAIVER

If a petitioner establishes the beneficiary's eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." *Id. Matter of Dhanasar*, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. *Dhanasar* states that U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion,[2] grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

Id.

The Director concluded that the Petitioner did not meet any of the three prongs of *Dhanasar*, but did acknowledge that her proposed endeavor had substantial merit. As discussed, the Petitioner submitted evidence reflecting that she co-developed an application adopted by medical research institutions around the country and that she was involved in other medical research projects working in coordination with the National Institutes of Health (NIH), as reflected in numerous support letters and other documentary evidence. As such, the Petitioner demonstrated with sufficient evidence that she is well positioned to advance her proposed endeavor to develop another application related to the collection and exchange of health data between facilities across the United States. *Id.* at 890. The Director's determination to the contrary is withdrawn. Therefore, the remaining issues are whether the Petitioner established that her proposed endeavor has national importance and whether, on balance, waiving the job offer requirement would benefit the United States.

A. National Importance

The first prong relating national importance focuses on the specific endeavor that the individual proposes to undertake. *Matter of Dhanasar*, 26 I&N Dec. at 889. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact. *Id.*

In determining that the Petitioner did not establish the national importance of her proposed endeavor, the Director concluded that the provided evidence did not demonstrate its potential prospective impact at a national or global level. The Director emphasized that the Petitioner did not establish the economic implications of her proposed endeavor and stated that its impact appeared to be localized to her employer. The Director further reasoned that there was not documentation or detailed evidence showing the Petitioner's proposed plans and indicated that they did not establish that the endeavor would potentially employ U.S. workers or otherwise offer substantial economic benefits for the United States in the field of research. In addition, the Director stated that provided reports and articles were overly broad and did not reflect the national importance of the Petitioner's proposed endeavor.

[2] *See Flores v. Garland*, 72 F.4th 85, 88 (5th Cir. 2023) (joining the Third, Ninth, Eleventh, and D.C. Circuit Courts of Appeals in concluding that USCIS' decision to grant or deny a national interest waiver is discretionary in nature).

On appeal, the Petitioner contends the Director overemphasized the potential prospective economic impact of her proposed endeavor and did not sufficiently consider its potential to broadly enhance societal welfare and to contribute to the advancement of valuable technology.

Upon review, we agree that the Director overemphasized whether the Petitioner's proposed endeavor would have substantial positive economic benefits on the U.S. economy and did not sufficiently consider whether it could have national importance based on its potential prospective impact on science, technology, health, education, or critical and emerging STEM technologies. On remand, the Director will consider all evidence in light of these other bases for eligibility with respect to national importance. *See* 6 USCIS Policy Manual F.5(D)(1) and (2).

B. Whether on Balance a Waiver is Beneficial

In the denial decision, the Director also concluded that the Petitioner did not demonstrate it would be beneficial to waive the requirement of the job offer, and thus of the labor certification, consistent with the third prong of *Dhanasar.*

The third prong requires a petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. at 890-91. In performing this analysis, we may evaluate factors such as: whether, in light of the nature of the individual's qualifications or the proposed endeavor, it would be impractical either for them to secure a job offer or to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from their contributions; and whether the national interest in their contributions is sufficiently urgent to warrant forgoing the labor certification process. *Id.* In each case, the factor(s) considered must, taken together, establish that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Id.* at 891.

On remand, the Director will also reconsider the third prong of *Dhanasar*, as necessary, based on their determination with respect to the first prong requirement of national importance, taking into account the potential prospective impact on science, technology, health, education, or critical and emerging STEM technologies[3] and whether it would be beneficial to the United States to waive the requirements of a

[3] *See* 6 USCIS Policy Manual F.5(D)(2). We also note that the USCIS policy manual outlines specific evidentiary considerations relating to STEM degrees and fields, including with respect to evaluating eligibility under the third prong. When evaluating the third prong and whether the United States may benefit from the person's entry, regardless of whether other U.S. workers are available, the USCIS policy manual instructs us to consider the following combination of facts contained in a record as a strong positive factor:

- The person possesses an advanced STEM degree, particularly a Ph.D.;
- The person will be engaged in work furthering a critical and emerging technology or other STEM area important to U.S. competitiveness; and
- The person is well positioned to advance the proposed STEM endeavor of national importance.

The benefit to the United States is considered especially weighty where the endeavor has the potential to support U.S. national security or enhance U.S. economic competitiveness, or when the petition is supported by letters from interested

job offer and thus of a labor certification. The Director may request any additional evidence considered pertinent to the new determinations and any other issues. As such, we express no opinion regarding the ultimate resolution of this case on remand.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

U.S. government agencies. *Id.*